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PATENT

Attorney Docket No.: A-68064-1/RFT/RMS/RMK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

DAHIYAT, et al.

Serial No.: 09/574,443

Filed: May 19, 2000

For: NOVEL PROTEINS WITH
INSULIN-LIKE ACTIVITY
USEFUL IN THE TREATMENT
OF DIABETES

) Examiner: Not Assigned

) Group Art Unit: 1643

CERTIFICATE OF MAILING

) I hereby certify that this correspondence, including listed
) enclosures, is being deposited with the United States
) Postal Service as First Class Mail in an envelope addressed
) to: Assistant Commissioner for Patents, Washington,
) DC 20231 on 8/19/01

Signed: _____

Gail Clark

DECLARATION MADE IN SUPPORT OF AUTHORITY OF BASSIL DAHIYAT
TO EXECUTE DECLARATION AND ASSIGNMENT IN NAME OF
ANDREW G. MORTON, DECEASED, UNDER 37 C.F.R. § 1.42

Assistant Commissioner of Patents
Washington, DC 20231

Sir:

I, BASSIL DAHIYAT, declare that:

1. I am a named inventor of the above referenced U.S. patent application, Serial No. 09/574,443, filed May 19, 2000, entitled *Novel Proteins with Insulin-Like Activity Useful in the Treatment of Diabetes*.

2. I also am the Chief Executive Officer of Xencor, Inc., the assignee.

3. As shown by the attached copy of the Certificate of Death, my former consultant and co-inventor Andrew G. Morton died on July 17, 1998. Dr. Morton had been a consultant for Xencor from April 23, 1998 until the time of his death.

4. I have been in contact with Dr. Morton's parents from the date of death to present, and to my personal knowledge no legal representative has been appointed in any forum for Dr. Morton. No estate has been opened and there are no plans to open an estate. Thus, there is no executor, administrator or other person acting in the capacity of legal representative.

5. Attached hereto is a true copy of a "Consulting Agreement", signed by Dr. Andrew Morton on April 27, 1998. As shown therein, particularly at ¶ 6, Dr. Morton was contractually obligated to assign all right, title and interest in any invention made or conceived as a result of performing consulting services for Xencor, Inc. under the Agreement.

6. Dr. Morton's contribution to the subject invention was made during the course and scope of his employment with Xencor, Inc. Accordingly, in my capacity as Chief Executive Officer of Xencor, Inc., I have executed Dr. Morton's name on the attached Declaration and Assignment.

7. All statements made herein of my own knowledge are true and all statements on information and belief are believed to be true. All statements made by me herein are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code, and that any willful false statements may jeopardize the validity of any patent resulting therefrom.

Date: 2/7, 2001

Signed: _____


Basil Dahiyat



CONSULTING AGREEMENT

This Agreement is made on April 23, 1998 between Xencor, a California corporation (the "Company") and Dr. Andrew Morton (the "Consultant"), and is effective as of April 23, 1998.

WHEREAS, the Company seeks to benefit from the Consultant's expertise in the field of Protein Design (the "Field"); and WHEREAS Company wishes to retain the Consultant as a consultant and the Consultant wishes to perform consulting services for the Company. Accordingly, the Company and the Consultant agree as follows:

1. Services.

The Consultant shall provide both advice and consulting services to the Company. In connection with his duties as a Consultant, Dr. Morton may be asked by the Company from time to time to provide any of the following consulting services:

- (i) applied and basic research in the Field, and the use of the Company's methods in the development of products and performance of research contracts;
- (ii) providing scientific advice regarding the Company's product lines and the general direction of its research program; and

(iii) generally advising the Company in its efforts to produce, develop, and market products in the Field.

The Parties agree that any written or oral consultation provided by Consultant is advisory, involving Consultant's judgment based on education and experience, and that there is no guarantee of any particular result from the consultation. The Company further agrees that Consultant may decline any proposed assignment if it is communicated to the Company in a timely manner.

2. Compensation.

As full consideration for the consulting services provided by the Consultant, the Company shall pay to the Consultant the amount of \$400 per day, payable biweekly for services rendered, beginning on April 23, 1998.

In addition to the foregoing compensation, the Company shall promptly reimburse the Consultant for all reasonable expenses incurred by the Consultant in providing consulting services under this Agreement.

3. Competition.

The Consultant represents to the Company that the Consultant will not enter into any agreement to provide consulting services in the Field during the term of this Agreement to any competing party, firm, or company in the biotechnology industry.

4. Confidentiality.

(a) In providing consulting services to the Company pursuant to this Agreement, the Consultant may acquire information that pertains to the Company's products, processes, equipment, programs, developments, or plans and that is both (i) disclosed or made known by the Company to the Consultant and (ii) identified as "proprietary" by the Company at any time ("Proprietary Information"). The Consultant agrees not to disclose any Proprietary Information to third parties or to use any Proprietary Information for any purpose other than performance of consulting services pursuant to this Agreement, without the prior written consent of the Company.

(b) Proprietary Information subject to paragraph 4(a) does not include information that: (i) is or later becomes available to the public through no breach of this Agreement by the Consultant; (ii) is obtained by the Consultant from a third party who had the legal right to disclose the information to the Consultant; (iii) is already in the possession of the Consultant on the date this Agreement becomes effective; or (iv) is required to be disclosed by law, government regulation, or court order. In addition, Proprietary Information subject to paragraph 4(a) does not include information generated by the Consultant unless the information is generated as a direct result of the performance of consulting services under this Agreement.

5. Return of Materials.

The Consultant agrees to promptly return following the termination of this Agreement or upon earlier request by the Company, all drawings, tracings, computer programs (source, object code or executable), computer files, and written materials in the Consultants possession and (i) supplied by the Company in conjunction with the Consultant's consulting services under this Agreement or (ii) generated by the Consultant in the performance of consulting services under this Agreement.

6. Intellectual Property.

(a) The Consultant hereby assigns to the Company any right, title, and interest he may have in any invention, discovery, improvement, or other intellectual property which the Consultant develops solely as a direct result of performing consulting services for the Company under this Agreement. Any intellectual property assignable to the Company pursuant to the preceding sentence is hereinafter referred to as "Company Intellectual Property." Upon the request of the Company, the Consultant shall execute such further assignments, documents, and other instruments as may be necessary to assign Company Intellectual Property to the Company and to assist the Company in applying for, obtaining and enforcing patents or other rights in the United States and in any foreign country with respect to any Company Intellectual Property. The Company will bear the cost of preparation of all patent or other applications and assignments, and the cost of obtaining and enforcing all patents and other rights to Company Intellectual Property.

7. Defense and Indemnification.

The Company agrees, at its sole expense, to defend the Consultant against, and to indemnify and hold the Consultant harmless from, any claims or suits by a third party against the Consultant or any liabilities or judgments based thereon, either arising from this Agreement, the Consultants performance of services for the Company under this Agreement, or any Company products which result from the Consultant's performance of services under this Agreement.

8. Term and Termination.

(a) Without limiting any rights which either party to this Agreement may have by reason of any default by the other party, each party reserves the right to terminate this Agreement at its convenience by written notice given to the other party. Such termination shall be effective upon the date not earlier than fourteen days following the date of such notice as shall be specified in said notice.

(b) This Agreement shall automatically terminate in the event Consultant does not render services to the Company for a period of sixty consecutive days.

(c) Termination of this Agreement under paragraph 8(a) or 8(b) above, shall not affect (i) the Company's obligation to pay for services previously performed by the Consultant or expenses reasonably incurred by the Consultant for which the Consultant is entitled to reimbursement under paragraph 2, above, (ii) the

Company's obligations to defend and indemnify the Consultant under paragraph 7 above, or (iii) the Consultant's continuing obligations to the Company under paragraphs 4 (a) - (b) and 6 (a) above.

9. Miscellaneous.

(a) This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, successors, representatives, and assigns of the parties, as the case may be; provided, however, the obligations hereunder of each party to the other are personal and may not be assigned without the express written consent of such other party.

(b) The relationship created by this Agreement shall be that of independent contractor, and the Consultant shall have no authority to bind or act as agent for the Company or its employees for any purpose. The parties acknowledge that this Agreement is not a contract of employment within the meaning of Section 2750 of this California Labor Code, and the Consultant is not an employee of the Company for any purpose under the California Labor Code.

(c) Notice given by one party to the other hereunder shall be in writing and deemed to have been properly given if deposited with the United States Postal Service, registered or certified mail, addressed as follows:

If to the **Company**:

199 S. Los Robles Ave. Suite 270
Pasadena, CA 91101
Attention: Dr. Bassil Dahiyat, President

and with copy to:

C.N. Franklin Reddick, III, Esq.
Troop Meisinger Steuber & Pasich, LLP
10940 Wilshire Boulevard
Los Angeles, California 90024

If to the **Consultant**;

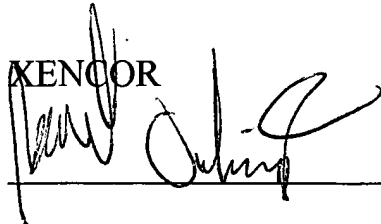
Dr. Andrew Morton
3113 Walnut Avenue
Manhattan Beach, CA 90266-3547

(e) This Agreement supersedes all previous agreements and discussions relating to the subject matters hereof and constitutes the entire agreement between the Company and the Consultant with respect to the subject matters of this Agreement. This Agreement may not be modified in any respect by any verbal statement, representation, or agreement made by any employee, officer, or other representative of the Company, or by any written documents unless it is signed by an officer of the company and by the Consultant.

(f) If any provision of this Agreement is adjudicated to be invalid, unenforceable, contrary to, or prohibited under applicable laws or regulations of any jurisdiction such provision shall be severed and the remaining provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the date first stated above.

KENCOR

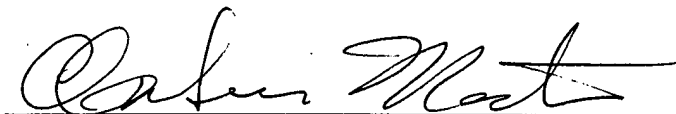


BY: Dr. Bassil I. Dahiyat

TITLE: President and CEO

DATE: April 27, 1998

CONSULTANT



Dr. Andrew Morton

DATE: April 27, 1998

CERTIFICATION OF VITAL RECORD

STATE OF COLORADO

STATE OF COLORADO CERTIFICATE OF DEATH

STATE FILE NUMBER

DECEDENT

1. DECEDENT'S NAME (First, Middle, Last) Andrew Greer MORTON				2. SEX Male		3. DATE OF DEATH (Month, Day, Year) July 17, 1998	
4. SOCIAL SECURITY NUMBER 161-62-9392		5a. AGE - Last Birthday (Years) 34		5b. UNDER 1 YEAR Mos Days Hrs Mins		6. DATE OF BIRTH (Month, Day, Year) Nov. 27, 1963	
7. BIRTHPLACE (City and State or Foreign Country) Pittsburg, PA		8. PLACE OF DEATH (Check only one) HOSPITAL: <input type="checkbox"/> Inpatient <input type="checkbox"/> ER/Outpatient <input type="checkbox"/> DOA <input type="checkbox"/> OTHER: <input checked="" type="checkbox"/> Nursing Home <input type="checkbox"/> Residence <input type="checkbox"/> Other (Specify) MM 161.9 Hwy #24					
9a. FACILITY NAME (If not institution, give street and number) MM#161.9 Southbound Hwy #24				9b. CITY, TOWN, OR LOCATION OF DEATH Rural Eagle County		9c. COUNTY OF DEATH Eagle	
10a. DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life. Do not use retired.) Consultant/Scientist		10b. KIND OF BUSINESS/INDUSTRY Bio-Chemistry		11. MARITAL STATUS - Married, Never Married, Widowed, Divorced (Specify) Never Married		12. SPOUSE (If wife, give maiden name)	
13a. RESIDENCE STATE California		13b. COUNTY Los Angeles		13c. CITY, TOWN, OR LOCATION Manhattan Beach		13d. STREET AND NUMBER 3113 Walnut Ave.	
13e. INSIDE CITY LIMITS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		13f. ZIP CODE 90266		14. WAS DECEDENT OF HISPANIC ORIGIN? (Specify No or Yes. If Yes, specify Cuban, Mexican, Puerto Rican, etc.) <input type="checkbox"/> No <input type="checkbox"/> Yes		15. RACE: American Indian, Black, White, etc. (Specify) White	
16. DECEDENT'S EDUCATION (Specify only highest grade completed) Elementary or secondary (0 through 12); College (13 through 16 or 17+) 20 Years							

PARENTS

17. FATHER'S NAME (First, Middle, Last) Sanford M. Morton		18. MOTHER'S NAME (First, Middle, Last) (Maiden Name) Jane E. Greer		19. INFORMANT NAME and relationship to decedent Jane Morton (Mother)	
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DISPOSITION

20a. METHOD OF DISPOSITION <input type="checkbox"/> Burial <input checked="" type="checkbox"/> Cremation <input type="checkbox"/> Removal from State <input type="checkbox"/> Donation <input type="checkbox"/> Other (Specify)		20b. PLACE OF DISPOSITION (Name of cemetery, crematory, or other place) Mount Lebanon Cemetery		20c. LOCATION - City or Town, State Mount Lebanon, PA	
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21a. SIGNATURE OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH 		21b. NAME AND ADDRESS OF FACILITY Aspen Mortuary 1350 Simms St. Golden, CO		ZIP: 80401	
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22a. REGISTRATION SIGNATURE 		22b. DATE FILED (Month, Day, Year) July 24, 1998	
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23. TIME OF DEATH 7:15 AM		24. DATE PRONOUNCED DEAD July 17, 1998		25. WAS CORONER NOTIFIED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
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CERTIFIER

26. To the best of my knowledge, death occurred at the time, date and place, and due to the cause(s) and manner as stated. Signature:		27. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place, and due to the cause(s) and manner as stated. Signature:	
28. DATE SIGNED (Month, Day, Year) July 17, 1998		29. DATE SIGNED (Month, Day, Year) July 17, 1998	

30. NAME, TITLE AND MAILING ADDRESS OF CERTIFIER/CORONER (Type/Print) Donna Barnes Coroner 2390 Saddle Ridge Loop Avon, CO		ZIP: 81620	
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32. MANNER OF DEATH <input type="checkbox"/> Natural <input type="checkbox"/> Pending Investigation <input checked="" type="checkbox"/> Accident <input type="checkbox"/> Undetermined Manner <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide		33a. DATE OF INJURY (Month, Day, Year) July 17, 98		33b. TIME OF INJURY 7:15AM		33c. INJURY AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		33d. DESCRIBE HOW INJURY OCCURRED Motor Cycle/Pick Up Accident	
33e. PLACE OF INJURY: At home, farm, street, factory, office building, etc. (Specify) Hwy 24 South Bound		33f. LOCATION (Street and Number or Rural Route Number, City, County, State) Rural Eagle County, Colorado							

CAUSE OF DEATH

34. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c). Do not enter mode of dying (e.g. Cardiac or Respiratory Arrest) alone. PART I - PART I (e.g. alcohol abuse, obesity, smoker)		Interval between onset and death	
(a) Massive Internal Injuries DUE TO OR AS A CONSEQUENCE OF		Interval between onset and death	
(b) Blunt Trauma DUE TO OR AS A CONSEQUENCE OF		Interval between onset and death	
(c) Motor Cycle/Pick Up Accident		Interval between onset and death	

35. AUTOPSY (Yes or No) Yes		36. IF YES were findings considered in determining cause of death? Yes	
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BEST AVAILABLE COPY

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE OFFICIAL RECORD WHICH IS IN MY CUSTODY.

DATE ISSUED

July 27, 1998

CAROL J. GARRETT, P.L.D.
STATE REGISTRAR

Do not accept unless prepared on security paper with engraved border displaying the Colorado state seal and signature of the Registrar. PENALTY BY LAW, Section 25-2-118, Colorado Revised Statutes, 1982, if any person alters, uses, attempts to use or furnishes to another for deceptive use any vital statistics record. NOT VALID IF PHOTOCOPIED.

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